IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 24203 of 2007(F)

CMA.44/2007 of II ADDL.DISTRICT COURT,ERNAKULAM
OS.53/2007 of II ADDL.M.C., ERNAKULAM
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PETITIONER:

SINDHU.M.C.,
AGED 36 YEARS,
W/O. ADV.V.M.KRISHNAKUMAR,
KOTTUPARAMBIL HOUSE,
H.NO.35/800,NORTH JANATHA ROAD,
PALARIVATTOM.P.O., EDAPPALLY SOUTH VILLAGE.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENT:

SUNSHINE ABODES PVT.LTD,
39/6889 A, PANAMPILLY NAGAR,
KOCHI-36, ERNAKULAM VILLAGE.

BY ADV. SRI.JOHN K.GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF BROCHURE ISSUED BY THE RESPONDENT.

EXT.P2: COPY OF COMMISSION REPORT, AND PLAN FILED IN O.S.NO.53/2007.

EXT.P3: COPY OF ORDER IN I.A.NO.10375/06 IN OS.1264/06 OF IIND ADDL. MUNSIFF COURT ERNAKULAM.

EXT.P4: COPY OF THE ORDER IN I.A.No.363/07 IN OS.NO.53/07.

EXT.P5: COPY OF THE JUDGMENT IN CMA.NO.44/07 OF DISTRICT COURT ERNAKULAM DTD.23.6.07.

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J

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W.P.(C).No. 24203 of 2007

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Dated this the 5th day of September, 2007

JUDGMENT

This writ petition is preferred against the order of the Additional District Judge, Ernakulam in C.M.A,44/2007. The said C.M.A was preferred against the order in I.A.No.363/2007 in O.S.No.53/2007 of the Munsiff Court, Ernakulam. The trial court did not find in favour of the plaintiff and dismissed the prayer for injunction. In the civil miscellaneous appeal the court made some observations and ultimately directed the trial court to dispose of the matter within a period of four months from the date of receipt of the order. It is against that decision the writ petition is preferred. The learned counsel for the writ petitioner submits before me that there must be a way having width of 5 meters for construction of a multi storied building and if it is not done, it will be in violation of Rule 33 of the Building Rules. There are observations in the orders of the court below here and there regarding the width of the road based on the Commissioner's Report and a contention raised by the

respondent that they have surrendered some land for widening the road so as to make it permissible under law. These are all matters that require consideration at the trial stage and it will not preclude the plaintiff from raising the contention of 5 meters width road of the road if it is so provided under Rule 33 of Kerala Building Rules. At this stage I do not want to interfere with the decision rendered, but I direct the trial court to dispose of the matter by 31.12.2007 untrammeled by the observations contained in the order passed by the trial court or by the Appellate Court. Needless to say parties be permitted to adduce both documentary and in oral evidence and also to takeout a commission for the purpose of properly resolving the controversy between the parties. Since the matter has been pending in this Court for some time, I extend the time fixed by the Second Additional District Judge to 31.12.2007.

The writ petition is disposed of accordingly.

M.N.KRISHNAN,JUDGE

dvs